

REMARKS:

In view of the foregoing amendments and the following remarks please reconsider the current application.

The applicant hereby affirms election of claims 1 through 10 drawn to a container. Claims 11 through 20 are hereby cancelled without prejudice. The applicant expressly reserves the right to pursue the same or similar subject matter of cancelled claims 11 through 20 in a divisional or continuation application.

In amending the claims, 11 claims have been cancelled and 10 new claims have been added and thus the total number of claims remains less than 20. Furthermore there are now three independent claims and accordingly there are no additional claim fees required.

The claims have now been amended in order to be distinguished from the Examiner's cited references or any other prior art references known to the applicant. In particular independent claim 1 has been amended and new independent claims 21 and 30 have been added to distinguish the present invention from the prior art references considered both alone and for a combination of references.

Claim 1 has been amended to further emphasize the structure of the container comprising a base portion and a lid portion for enclosing the base portion. Claim 1 has also been amended to include the additional limitation that the container is provided in combination with the shovel to further emphasize that the scoop opening is suitably sized to the scoop of the shovel provided in combination with the container. Claim 1 also includes the additional limitation of previously submitted claim 6 with regard to the flexible gate which extends across the scoop opening to engage the scoop as the scoop is pulled through the scoop opening. By arranging the gate to be flexible, the gate can closely conform to the shape of the scoop for preventing airborne particles such as ashes being dumped within the interior of the container from escaping through the scoop opening as the scoop is withdrawn.

None of the Examiner's references appear to disclose a container in combination with a shovel in which a scoop opening in the container is suitably sized to receive the scoop of the shovel therethrough. With regard to the flexible gate described in previously submitted claim 6, the Examiner's only previous basis for rejecting this feature was the cited reference to Guard, US 5,377,907. Guard however discloses no such gate which is flexible in accordance with the present invention. There is no suggestion in the document that the gate is flexible, nor is there provided any motivation for the gate to be flexible. As shown in Figure 6 the gate 138 includes two sections 173 and 175 which diverge from one another as they extend downwardly away from the pivot axis suggesting that the sections are in fact rigid and self-supporting so as to be maintained in a divergent relationship. The description further emphasizes that an ABS adhesive may be used for securement of the gate to the shaft which has a similar cross sectional dimension, which further implies that the gate has a similar rigidity to that of the shaft if both the shaft and the gate member are formed of ABS material capable of being bonded to one another with ABS adhesive. As the amended claim 1 is now distinguished from the prior art, it is respectfully submitted that claim 1 should now be in condition for allowance.

New claim 21 has been added to include the limitations of the above noted amended claim 1 with regard to the scoop opening being near in dimensions to the dimensions of the scoop of the shovel provided in combination with the container. This is desirable for preventing escape of airborne particles dumped into the container as noted above. New claim 21 also includes the limitation of an access opening in communication between the scoop opening and the seam formed between the lid portion and the base portion of the container. By providing an access opening to the seam and thus the open top end of the base portion, the scoop opening can be sized to closely surround the scoop as the scoop can be inserted into the container through the open top end of the base portion and is then only withdrawn through the scoop opening. In the prior art arrangements, any opening in

the container is intended to receive the material being dispensed into the container through the opening so that the opening is much larger than a typical scoop of a shovel and would readily permit escape of airborne particles when removing a shovel which has just been dumped within the container. It is believed that claim 21 is now also patentably distinguished from the prior art.

New claim 30 has been added to include all of the features of the above noted independent claims 1 and 21 together with the further limitation that the floor comprise substantially fire proof material which is insulated. By being insulated, the fireproof material is unlike the Examiner's only cited reference with regard to fire proof material, US 1,618,366 to Culling in which the fire proof material comprises concrete which is not an insulating material, but rather a material having a high heat capacity which absorbs and subsequently releases large amounts of heat but does not slow the transmission of heat in the manner of a typical insulating material.

Claim 30 also includes the additional limitation that the flexible gate comprises bristles extending across the scoop opening. The use of bristles rather than a continuous panel to form the gate further restricts airborne particles from exiting the container as the shovel is withdrawn because the bristles more closely conform to the shape of the shovel being withdrawn.

All of the features of claim 30, including the scoop opening near in size to the dimensions of the scoop of the shovel, the access opening which communicates from the scoop opening to the seam between the lid portion and the base portion and the flexible gate of bristles spanning the scoop opening cooperate together so that a new function is achieved of permitting a shovel with a scoop full of particulate material to be inserted into a container without disturbing the particulate material by inserting the scoop into the open top end, receiving the handle through the access opening closing in the lid portion to the base portion at a seam therebetween, dumping the particulate material only after the hollow interior has

been enclosed by the lid portion, and subsequently withdrawing the scoop through the scoop opening while the bristles conform to the shape of the scoop to fully prevent escape of the airborne particles which have been disturbed due the dumping action of the scoop within the container. None of the prior art references permit such a function to be achieved and accordingly claim 30 is distinguished and should be in condition for allowance.

Early and favorable reconsideration of this application is earnestly solicited.

Respectfully submitted

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CERTIFICATION OF FACSIMILE TRANSMISSION

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